*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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+ W.P.No.31344 OF 1997

% Dated 23-12-2005

The Depot Manager, APSRTC, Nirmal Depot, Adilabad District.

.... Petitioner

Vs.

$ Mirza Basheer Baig, C/o Egg Centre, Old Bus Stand, Nirmal, Adilabad District and another.

…. RESPONDENTS

! Counsel for the Petitioner: Smt. P. Rajini Reddy

^ Counsel for the Respondents: Sri M. Ramarao

<GIST:

> HEAD NOTE:

? Cases referred

AIR 1964 SC 743

[2] 1965 (1) LLJ 150

[3] AIR 1969 SC 1335

[4] AIR 1975 SC 1898

[5] AIR 1964 SC 752

[6] AIR 1968 SC 218

[7] 1996(3) LLJ 952

[8] 2002(3) ALD 516

[9] AIR 2000 SC 1508

[10] AIR 1974 SC 1604

[11] (1995)1 SCC 235

[12] (2001)1 SCC 73

[13] (2005)8 SCC 58

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.31344 OF 1997

O R D E R:

Questioning the order of the Industrial Tribunal-cum-Labour Court, Godavarikhani, in M.P.No.4 of 1996 in I.D.No.21 of 1980, dated 07.04.1997, the Depot Manager, APSRTC, Nirmal Depot, has filed the present writ petition.

Facts, to the extent necessary for this writ petition, are that the first respondent was appointed as a Conductor on 12.10.1963 and was removed from service on 06.11.1971 for his involvement in cash and ticket irregularities. The first respondent raised a dispute, in I.D.No. 21 of 1980, before the Tribunal and, by award dated 09.08.1980, the petitioner was directed to reinstate the first

respondent into service with full back wages and all other attendant benefits. Aggrieved thereby the petitioner filed W.P.No. 2872 of 1981, and the execution of the award was stayed by this Court subject to the condition that the workman be reinstated and 1/6th of the back wages that were awarded being deposited.

It is the case of the petitioner that, pursuant to the award of the Tribunal dated 09.08.1980, the Divisional Manager, Nizamabad, had issued proceedings dated 03.03.1982, posting the first respondent at Kamareddy Depot, pending further orders in W.P.No.2872 of 1981. W.P.No.2872 of 1981 was dismissed by this Court by order dated 23.10.1986. It is the case of the petitioner that, in spite of the office order dated 03.03.1982 issued by the Divisional Manager, Nizamabad, reinstating him into service, the first respondent did not report to duty till 31.03.1993 and he was thereafter, posted to Bhainsa on 06.02.1996. The first respondent filed E.P.No.14 of 1993, which was dismissed. He subsequently filed M.P.No.4 of 1996, under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), before the Tribunal for recovery of Rs.4,77,606-10 ps towards arrears of wages.

Before the Tribunal, in M.P.No.4 of 1996, the petitioner herein contended that the petition filed by the workman/first respondent was not maintainable under Section 33 (C)(2) and that the Tribunal did not have jurisdiction to entertain the petition. It was contended that since the first respondent did not approach the petitioner for reinstatement, he was not entitled for the benefits of arrears of wages and as he had avoided joining duty, he was not entitled for promotion and continuity of service. The petitioner contended that the first respondent was not entitled for Rs.4,77,606-10 ps., claimed by him, as he had willfully avoided joining duty at Kamareddy Depot, soon after the award was passed or at least after the interim directions passed by this Court in W.P.No. 2872 of 1981 whereby execution of the award was stayed subject, among other conditions, that the first respondent be reinstated into service.

The first respondent examined himself as WW.1 and marked Exs.W.1 to W.8, whereas one witness was examined on behalf of the petitioner as M.W.1 and Exs.M.1 to M.14 were marked as exhibits. While the petitioner contended that the first respondent had failed to join duty despite the posting orders dated 03.03.1982, the first respondent contended that he did not receive the said

orders of posting and was, in fact, not given any posting orders in spite of the legal notice given by his counsel.

The Tribunal held that it had jurisdiction to try the petition in M.P.No. 4 of 1996 under Section 33 (C)(2) of the Act. The Tribunal relied on the office copy of the legal notice sent by the counsel of the first respondent, marked as Ex.W.3, and the oral evidence of the first respondent that the same was sent by registered post acknowledgment due, a copy of which was marked as Ex.W.5. Placing reliance on Ex.W.7, notice dated 27.09.1993, though disputed by the petitioner as having been brought into existence, the Tribunal held that the said document was genuine inasmuch as Ex.W.6, postal receipt dated 27.09.1993 had been produced in support thereof. The first respondent contended that he was not given posting orders and had therefore filed E.P.No.14 of 1993, that only thereafter were posting orders issued by the petitioner, pursuant to which he joined duty. The Tribunal held that Ex.M.3, dated 24.02.1982, was not a reinstatement order and was only a direction given to the Deputy Manager, Nizamabad, to issue reinstatement orders, that since there was no documentary proof to show that the office order in Ex.M.2 was sent to the first respondent and that he had received the same, and since the first respondent, as WW.1, had categorically stated that he was not aware of the proceedings and had not received the posting orders dated 03.03.1982, it must be held that no reinstatement orders were issued and in the absence of any acknowledgement, it had to be held that the first respondent had not received the posting orders dated 03.03.1982. The Tribunal further held that the first respondent was not aware of the posting orders as it was not served, that he was entitled to back wages till he was allowed to join duty, and that he was not entitled to bonus, ex-gratia or encashment of leave. The Tribunal directed that the first respondent be paid Rs.4,30,414/- with interest at 6% P.A. from the date of filing of M.P.No.4 of 1996 i.e., 25.03.1996. It is this order of the Tribunal, which is impugned in this writ petition.

Smt P.Rajini Reddy, learned counsel for the petitioner, would contend that since proceedings under Section 33 (C)(2) are in the nature of execution proceedings, the dispute as to whether or not the first respondent had received the proceedings dated 03.03.1982, asking him to join duty; and whether or not he was prevented from joining duty subsequent to the award, were all questions

which could not be examined in execution proceedings, in M.P.No.4 of 1996 and the remedy, if any, for the first respondent/workman was under Section 10, and not under Section 33-C(2) of the Act.

Sri M.Rama Rao, learned counsel for the first respondent, would submit that the question as to whether the petitioner was entitled to arrears of pay from the date of the award dated 07.08.1980 till his reinstatement on 06.02.1996, was an incidental question, which could be examined in proceedings under Section 33-C(2) of the Act. Learned counsel would rely on **CENTRAL BANK OF INDIA LTD. v. P. S. RAJAGOPALAN, CHHOTU KALU (IMPERIAL TOBACCO COMPANY OF INDIA, LTD., EMPLOYEES' UNION, AHMEDABAD) V. LABOUR COURT, TOWN MUNICIPAL COUNCIL, ATHANI V. PRESIDING OFFICER, LABOUR COURT, HUBLI, PUNJAB CO-OPERATIVE BANK LTD. V. R. S. BHATIA, BOMBAY GAS CO. LTD. V. GOPAL BHIVA, CHIEF MINING ENGINEER, M/S. EAST INDIA COAL CO., LTD., BARAREE COLLIERY, DHANBAD V. RAMESHWAR, SARANGI RAMACHANDRAIAH V. NAGARJUNA GRAMEENA BANK, EXECUTIVE ENGINEER, PENSTOCK FABRICATION AND ERECTION DIVISON V. P.SESHAGIRI RAO, INDIAN OVERSEAS BANK V. I.O.B. STAFF CANTEEN WORKERS' UNION.**

Before examining the rival contentions, it is necessary to refer to Section 33-C of the Act, which reads as under:

> **33-C. Recovery of money due from an employer:--**
>
> (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-B] the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrear of land revenue.
>
> Provided that every such application shall be made within one year from the date on which money became due to the workman from the employer :
>
> Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is

satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months];

[Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation:- In this Section “Labour Court” includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

A proceeding under Section 33-C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workmen is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or otherwise duly provided for. In a suit, a claim for relief made by the plaintiff against the defendant involves

an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination no. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). Since a proceeding under Section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. Therefore, when a claim is made before the Labour Court under S. 33-C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. (**CENTRAL INLAND WATER TRANSPORT CORPORATION LTD. V. THE WORKMEN**).

In the present case, the award in I.D.No.21 of 1980 was passed on 07.08.1980, whereby the first respondent was directed to be reinstated into service with full back wages. As such, the first respondent would automatically be entitled to the entire back wages from 06.11.1971 till the date of the award dated 07.08.1980, and arrears of back wages for the aforesaid period can certainly be computed by the labour Court in proceedings under Section 33-C(2) of the Act.

What arises for consideration, is, whether the Labour Court, in proceedings under Section 33-C (2), could have examined the question as to whether or not the first respondent, pursuant to the award in I.D.No. 21 of 1980,

was called upon by the petitioner to join duty and as to whether he was entitled for payment of salary subsequent to the date of the award i.e. 07.08.1980 till the date of his actual reinstatement on 06.02.1996.

While Smt P. Rajini Reddy, learned counsel for the petitioner, would submit that the entitlement of the first respondent for salary for the period subsequent to the date of the award till the date of his actual reinstatement on 06.02.1996, are matters which do not flow or arise from out of the award in I.D.No. 21 of 1980 dated 09.08.1980 and as such, did not call for examination in proceedings under Section 33 (C)(2) of the Act, Sri M.Rama Rao, learned counsel for the first respondent would submit that these are all incidental questions, which arose consequent upon the award passed by the Tribunal and for failure of the petitioner, to permit the first respondent-workman to join duty, the only forum available, for a claim of salary for this period, was in proceedings under Section 33(C)(2) alone and not by way of a fresh dispute or a reference made thereupon under Section 10 of the Act. Sri M. Rama Rao, learned Counsel for the first respondent, would submit that, pending disposal of the present writ petition, the first respondent has been paid 50% of the amount awarded by the Tribunal in M.P.No.4 of 1996 and that he has already retired from service on 30.04.1999. Learned counsel would submit that at the time of admission of the present writ petition, 25% was paid and after the vacate stay petition was filed by the first respondent, another 25% was directed to be paid on 12.02.1998.

Before examining whether or not the Tribunal, in proceedings under Section 33-C(2), has the jurisdiction to examine questions of this nature, relating to payment of salary for a period of more than 15 years from the date of the award in I.D.No.21 of 1980 dated 07.08.1980, till the reinstatement on 06.02.1996, the judgments relied upon by Sri M.Rama Rao, learned counsel for the first respondent, shall be referred to.

In **P. S. RAJAGOPALAN[1],** the question which arose for consideration was as to whether a section of employees of the Central Bank of India Ltd. were entitled for payment of special allowance for operating the adding machine in accordance with the provisions of the Shastri Award. The contention raised on behalf of the bank was that the question regarding the existence of the right

set up by the workman, would call for interpretation of the award or settlement on which the right is said to be based, and that cannot be within the jurisdiction of the Tribunal or Labour Court under Section 33-C(2). While holding that the power exercised by the Tribunal/Labour Court under Section 33-C(2), is akin to an executing court, the Supreme Court held that it was open to the executing court to interpret the decree for the purpose of execution, though it could not go behind the decree, nor could it add to or subtract from the provision of the decree. The Supreme Court further held that while these limitations, which apply to an executing court, are also applicable to the Labour Court, the Labour Court however, like the executing court, was competent to interpret the award or settlement, on which the workman based his claim, in proceedings under Section 33- C(2) of the Act. The Supreme Court held thus:

> "We would, however, like to indicate some of the claims which would not fall under S. 33C(2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under S. 33C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under S. 33C(2)……"

In **CHHOTU KALU**[2], the workmen claimed that they were entitled to basic wages and dearness allowance in accordance with the settlement arrived at between the workmen and the company and since they were not paid at these rates, they approached the Labour Court at Ahmedabad under Section 33-C(2) of the Act. The Labour Court held that that the question whether the workmen were employees of the Company; whether they were covered by the terms of settlement or not; and whether they had acquiesced in the arrangement under which their services with the company were terminated are all matters which could not be gone into in proceedings under Section 33-C(2) of the Act. The Division Bench of the Gujarat High Court, however, held that the view of the Labour Court, regarding the provisions of Section 33-C(2) of the Act was erroneous, and were matters which ought to have been adjudicated by the Labour Court in proceedings under Section 33-C(2).

In **TOWN MUNICIPAL COUNCIL, ATHANI**[3], the Supreme Court held that Article 137 of the schedule to the Limitation Act, 1963, does not apply to applications under Section 33-C(2) of the Industrial Disputes Act, and that no limitation was prescribed for such applications.

In **R. S. BHATIA**[4], the claim of the workman was that under the Shastri Award he was entitled for the benefits which the bank had refused to pay. The Supreme Court held that the claim of the workman was limited to the period from 01.04.1954 to 1961 and the application under Section 33-C(2) was filed on 10.07.1968. The plea of the bank, that the application filed by the workman under Section 33-C(2) of the Act was barred by limitation and was not fit to be entertained on the ground of undue delay and laches, was rejected by the Labour Court, and the view taken by Labour Court was affirmed by the Supreme Court.

In **GOPAL BHIVA**[5], contending that as a result of the award of the Industrial Tribunal they were entitled to certain benefits, the workmen approached the Labour Court to compute the benefit in terms of money and to direct the employer to pay the same. With regards the plea of laches, the Supreme Court held that a decree passed under the Code of Civil Procedure was capable of execution within 12 years, provided, of course, it was kept alive by taking steps in aid of execution from time to time as required by Article 182 of the Limitation Act; and in cases where the legislature had made no provision for limitation, it would not be open to the Courts to introduce any such limitation on grounds of fairness or justice. The Supreme Court held that the words of Section 33-C(2) were plain and unambiguous and it was the duty of the Labour Court to give effect to the said provision without any considerations of limitation.

In **RAMESHWAR**[6], the workmen claimed bonus under a scheme framed by the Central Government under the Coal Mines Provident Fund and Bonus Schemes Act,
(Act 46 of 1948), and railway fares and leave wages under the award of the Industrial Tribunal. The applications under Section 33-C(2) were made in 1962,

though they related to claims for the years commencing from 1948 onwards. The Supreme Court held that there was no justification in inducting a period of limitation, as provided in the Limitation Act, into the provisions of Section 33-C(2) which do not lay down any limitation and that such a provision could only be made by the legislature if it thought fit and not by the Court on an analogy or any such consideration. The Supreme Court held that the Labour Court had the jurisdiction to entertain the claim if it was based on an existing right or a benefit provided by a statute or a scheme made thereunder.

In **SARANGI RAMACHANDRAIAH**[7], the question which fell for consideration before a Division Bench of this Court was whether the Labour Court, while deciding an application under Section 33-C(2) of the Act, could refuse the claim of a reinstated workman for salary for the period from the date of removal till the date of the judgment in the writ petition in which the removal order was set aside, taking the view that such a claim of the workman was not an existing right implementable under the Section. The Division Bench held that this was a matter which certainly could be and ought to have been examined by the Labour Court in proceedings under Section 33-C(2) of the Act.

In **P.SESHAGIRI RAO**[8]**,** the workmen claimed difference of wages in terms of a government order, whereby pay scales applicable to NMR workers in the Srisailam project was treated on par with employees of the work-charged established. The Division Bench of this Court held that in order to invoke the jurisdiction of the Labour Court, under Section 33-C(2), either of the two ingredients must be present. The first is that a workman must be entitled to receive from the employer any money or benefit which is capable of being computed in terms of money and the second is that a question must have arisen as to the amount of money due, or as to the amount at which such benefit should be computed. The Division Bench held that in a case where both these ingredients are satisfied or either of these ingredients are satisfied, the Labour Court will have the jurisdiction to determine the question. The Division Bench further held that the Legislature had empowered the Labour Court to decide a dispute as to the right of the workman to receive from the employer any money or any benefit which is capable of being computed in terms of money and had authorized it to decide the question as to the amount of money due or as to the amount at which such benefit should be computed. The

Division Bench held:-

> "……..If this is the position in law, the Labour Court ought not to have gone into the question whether the respondent-workmen have a right to receive wages on par with the work-charged establishment employees in terms of G.O.Ms.No.242, dated 01.06.1977 read with G.O.Ms.No.163, dated 11.05.1982 with effect from 30.04.1976. We say this because G.O.Ms.No.163, dated 11.05.1982 under which only the respondents-workmen can claim the benefits of G.O.Ms.No.242, dated 01.06.1977, was brought into force from 11.05.1982 and not with any retrospective effect muchless from 30.04.1976. If the respondents-workmen claim parity of wages for the period from 30.04.1976 to 11.05.1982 on the basis of doctrine of 'equal pay for equal work', then, it is absolutely necessary for the workmen to establish that right in an appropriate proceeding envisaged under the Act. Such entitlement question can be decided by the Labour Court or the concerned Industrial Tribunal under Section 10 of the Act and such a question cannot be decided in a proceeding under Section 33-C(2) of the Act, which is akin to an execution proceeding under CPC. In that view of the matter, we are of the considered opinion that the Labour Court has exceeded its jurisdiction in allowing the petition of the respondents-workmen. In that view of the matter, the order of the learned single Judge also cannot be sustained."

Sri M.Rama Rao, learned counsel for the first respondent, would submit that the petitioner has not even taken the plea of laches before the Tribunal and in the absence of any such plea being taken before the Tribunal, the question can neither be urged nor can it be examined in Certiorari proceedings under Article 226 of the Constitution of India. Learned counsel would contend that the High Court does not exercise any appellate jurisdiction over awards/orders of Tribunals/Labour Court and that findings of fact recorded by a fact finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on material or evidence not sufficient or credible, in the opinion of the writ Court, to warrant interference with those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. Learned counsel would rely on **INDIAN OVERSEAS BANK**[9] in this regard, and submit that the jurisdiction of this Court was limited to finding out the satisfaction or otherwise of the relevant criteria on the facts found and recorded by the fact-finding authority and not to embark upon an exercise of re-assessing the evidence and arriving at its own findings,

giving a complete go-bye to the facts specifically found by the Tribunal.

The Award, in I.D.No. 21 of 1980 dated 09.08.1980 directed that the 1st respondent be reinstated into service with full back wages and all other attended benefits. The back wages, which the 1st respondent was entitled to under the award, was from the date of his termination from service on 06.11.1971 till the date of the award on09.08.1980, for a period of around nine years. Since it has been laid down in **Town Municipal Council, Athani**[3], **R.S. Bhatia**[4], **Gopal Bhiva**[5] and **Rameshwar**[6] that there is no justification in inducting a period of limitation, as provided in the limitation Act, into the provisions of Section 33-C(2) which does not lay down any limitation and as, in any event, the petitioner herein has not even pleaded latches in M.P.No. 4 of 1996 before the labour Court, the 1st respondent cannot be denied back wages for the period commencing from the date of his termination till the date of the award as it is an existing right which accrued in his favour under the Award in I.D.No. 21 of 1980 dated 09.08.1980.

The claim of the 1st respondent, for arrears of wages for the period from the date of the award ie., 09.08.1980 till his eventual reinstatement into service on 06.02.1996, however stands on a different footing. Sri M. Rama Rao, learned Counsel for the 1st respondent, would contend that, since the award in I.D.No. 21 of 1980 dated 09.08.1980 directed reinstatement, the 1st respondent had a pre-existing right under the said award to be reinstated and failure of the petitioner to reinstate him for more than fifteen years would entitle him to file the application under Section 33-C(2) and confer jurisdiction on the labour Court to examine this incidental question.

In **Municipal Corporation of Delhi vs. Ganesh Razak**. Daily rated/Casual workers of the Municipal Corporation of Delhi, who claimed that they were doing the same kind of work as regular employees and were entitled for the same pay on the doctrine of “equal pay for equal work”, filed applications under Section 33-C(2) before the labour Court for computation of arrears of their wages. Their claim was accepted by the labour Court and a challenge thereto before the Delhi High Court was dismissed. On the said order being challenged by the Municipal Corporation of Delhi, the Supreme Court held:

"The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity required interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

"In these matters, the claim of the respondent-workmen, who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

In **State Bank of India Vs. Ram Chandra Dubey**, on a reference made by the Central Government as to whether the action of the State Bank of India in terminating the services of 26 workmen was justified or not, the Tribunal passed an order directing reinstatement of the service of the workmen but was silent with regards payment of back wages for the period between the date of termination till the date of reinstatement. Aggrieved thereby the State Bank of India approached the Allahabad High Court. The said writ petition was dismissed holding that since the workmen had been working for the last nine

years, by the time their case was taken up for hearing, it was not a case for interference under Article 226 of the Constitution of India. After disposal of the writ petition the workman filed applications under Section 33-C(2) of the Industrial Disputes Act for computation of back wages on the basis of the award and the subsequent order of the High Court. The Tribunal allowed the applications and computed the amounts payable to the workman by way of back wages. Challenging the said award, the State Bank of India again approached the Allahabad High Court contending that since the earlier award was silent with regards payment of back wages the labour Court, in proceedings under Section 33-C(2), was not justified in making an order computing back wages. This contention was rejected by the Allahabad High Court holding that the award could not be interpreted to mean that back wages were not implied in the relief of reinstatement and that the award, by which reinstatement was ordered, embraced within its ambit the claim of full back wages even though it was silent on the point and since the application filed by the workman, under Section 33-C(2) was essentially for the purpose of computation of back wages, the labour Court had not determined any new right in favour of the workman and had simply computed back wages on the basis of the award of reinstatement which conferred a right to claim back wages on the respondent workman. On a challenge to the order of the High Court by the State Bank of India the Supreme Court held thus:

"When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen."

"The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is

necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

In **State of U.P. Vs. Brijpal Singh** the workman challenged the order dated 03.07.1987, terminating him from service, by filing a writ petition before the Allahabad High Court and, by order dated 28.10.1987, the operation of order of termination dated 03.07.1987 was stayed. The workman, after a lapse of six years, filed an application before the labour Court under Section 33-C(2) of the Industrial Disputes Act seeking payment of salary from 04.07.1987 to July 1993 and for bonus for the years 1987 to 1992. The labour Court, by order dated 23.08.1995, directed the State of U.P. to make payment of salary and bonus from 1987 to 1992. The said order of the labour Court was challenged by the State of U.P. in the Allahabad High Court contending that the labour Court had no jurisdiction to try the said controversy. The Allahabad High Court, by order dated 09.01.2002, dismissed the petition holding that the workman was entitled to salary and other allowances and since the writ petition filed before the High Court had not been finally disposed of, the liability of making payment could not be avoided and a petition under Section 33-C(2) of the Industrial Disputes Act was competent and maintainable. Aggrieved by the order of the Allahabad High Court, the State of U.P. approached the Supreme Court and it was held thus:

"It is well settled that the workman can proceed under Section 33C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that

the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages Pvt. Ltd. Vs. Suresh Chand , (1978) 2 SCC 144 held that a proceeding under Section 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows:

"It is not competent to the Labour Court exercising jurisdiction under Section 33C(2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act."

Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under Section 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the I.D.Act……."

While the petitioner contends that during the pendency of W.P.No. 2872 of 1981 before this Court, the 1st respondent was called upon to join duty vide proceedings dated 03.08.1992, the 1st respondent would contend that he did not

receive the said order of posting. While the 1st respondent would rely on the legal notice sent on his behalf calling upon the petitioner to reinstate him into service, the petitioner would contend that these documents were brought into existence. The fact however remains that despite an award being passed by the Tribunal on 09.08.19980, the 1st respondent was reinstated more than 15 years thereafter on 06.02.1996. The question as to whether during this period of 15 years the 1st respondent was gainfully employed elsewhere, whether the petitioner had asked him to join duty and whether the legal notice sent on his behalf had been received by the petitioners are among the several factors which are required to be examined before the 1st respondent could be held as being entitled to the arrears of wages from the date of the award till the actual date of his reinstatement into service. These questions can, as held in **Ramachandra Dubey**[12] be appropriately examined only in a reference and when a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal. Since the entire dispute revolves around the period posterior to the award and it is not in dispute that there has been no earlier adjudication or recognition thereof by the petitioner-employer, the dispute relating to the entitlement of the 1st respondent for arrears of wages during this period is not incidental to the benefit claimed and is clearly beyond the scope of proceedings under Section 33-C2 of the Act. As held in **Ganesh Razak**[11], the labour Court does not have the jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis, in exercise of its powers under Section 33-C2 of the Act. The labour Court must, therefore, be held to have acted in excess of jurisdiction in appreciating the evidence adduced before it and in recording a finding that the petitioner had not called upon the first respondent to join duty, after the award in I.D.No. 21 of 1980 dated 09.08.1980. While Sri M. Rama Rao, learned counsel for the 1st respondent, contends that it is just and fair that the 1st respondent be paid this amount since the petitioner was at fault in not reinstating him into service immediately after the award was passed, and that the consequences of any order passed by this Court, setting aside the order in M.P. No. 4 of 1997, would result in recovery proceedings being initiated against the 1st respondent, who, pursuant to the interim directions passed in the present writ petition, has been paid 50% of the amount ordered by the labour

Court and has retired from service on 30.04.1999. As held in **Brijpal Singh**[13] the labour Court has no jurisdiction to adjudicate the claim made by the 1st respondent under Section 33-C(2) of the Act in an undetermined claim until such adjudication is made in an appropriate forum. The difference, between the pre-existing right or benefit on the one hand and the right or benefit which is considered just and fair on the other, is vital. While the former falls within the jurisdiction of the labour Court, exercising powers under Section 33-C2 of the Act, the latter does not. (**Ramachandra Dubey**[12]). The illustrations given in **P.S. Rajagopalan**[1] would also show that the claims, such as the one made by the 1st respondent herein are matters which are not incidental questions and therefore cannot be adjudicated in proceedings under Section 33-C2 of the Industrial Disputes Act.

The order of the labour Court in M.P.No. 4 of 1996 in I.D.No. 21 of 1980 dated 07.04.1997, to extent of computing arrears of wages from the date of the award dated 09.08.1980 till the date of reinstatement on 06.02.1996 is quashed as without jurisdiction. The matter is remanded to the labour Court to compute the arrears of back wages from the date of termination of the 1st respondent on 06.11.1971 till the date of award on 09.08.1980 along with 6% interest per annum as directed by the labour Court, giving credit to the amount paid by the petitioner pursuant to the interim orders of this Court. This exercise shall be completed by the labour Court as expeditiously as possible not later than a period of two months from the date of receipt of a copy of this order.

While the submission, that the 1st respondent had retired from service from 30.04.1999 and the 50% amount paid to him, pursuant to the interim orders of this Court in the present writ petition, if sought to be recovered would cast an enormous liability which the 1st respondent would be in no position to bear, undoubtedly deserves sympathetic consideration, it is not for this court to go into these questions in certiorari proceedings under Article 226 of the Constitution of India. I have no doubt that the petitioner shall bear all these aspects in mind and take an appropriate decision in the matter.

The writ petition is accordingly allowed to the extent indicated above. There shall however be no order as to costs.

Dt: .12.2005

RAMESH RANGANATHAN, J

USD/MRKR